

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

|                           |   |                              |
|---------------------------|---|------------------------------|
| ROBERT HANKINS,           | ) |                              |
|                           | ) |                              |
| Plaintiff,                | ) |                              |
| v.                        | ) | Civil Action No. 07-332 Erie |
|                           | ) |                              |
| JEFFREY A. BEARD, et al., | ) |                              |
|                           | ) |                              |
| Defendants.               | ) |                              |

**MEMORANDUM ORDER**

\_\_\_\_\_ Plaintiff's civil rights complaint was received by the Clerk of Court on December 3, 2007 and was referred to Chief United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Chief Magistrate Judge's Report and Recommendation, filed on February 12, 2009 [98], recommends that Defendant Chris Meyer's Motion [55] to Dismiss Amended Complaint be granted in part and denied in part. It further recommends that, pursuant to the authority granted to courts in the Prison Litigation Reform Act, Plaintiff's claims against all unnamed Defendants be dismissed because Plaintiff has failed to identify and serve said Defendants within 120 days, in accordance with the requirements of Rule 4(m) of the Federal Rules of Civil Procedure.

The parties were given ten (10) days in which to file objections. Plaintiff filed his objections [103] on February 25, 2009. After de novo review of the complaint and documents in the case, together with the Report and Recommendation and Plaintiff's objections thereto, the following order is entered:

AND NOW, this 27<sup>th</sup> day of February, 2009;

IT IS ORDERED that Defendant Chris Meyer's Motion [55] to Dismiss Amended Complaint be, and hereby is, GRANTED in part and DENIED in part, as follows:

1. The motion to dismiss Plaintiff's deliberate indifference claim arising from the assault incident that allegedly occurred on March 18, 2005, is granted and said claim is dismissed as untimely.

2. The motion to dismiss Plaintiff's retaliation and deliberate indifference claims arising from the confiscation of and failure to return or replace his knee brace is denied.

IT IS FURTHER ORDERED that, pursuant to the authority granted to courts under the Prison Litigation Reform Act, Plaintiff's claims against all unnamed Defendants are hereby DISMISSED, and said Defendants are terminated from this case, inasmuch as Plaintiff has failed to identify and serve these Defendants within 120 days in accordance with the requirements of Rule 4(m) of the Federal Rules of Civil Procedure.

The Report and Recommendation of Chief Magistrate Judge Baxter, filed on February 12, 2009 [98], is adopted as the opinion of this Court.

s/ SEAN J. McLAUGHLIN

Sean J. McLaughlin  
United States District Judge

cc: all parties of record  
Chief U.S. Magistrate Judge Baxter